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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SAFETECH INTERNATIONAL, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 02-2216
)	
AIR PRODUCTS AND CONTROLS, INC.,)	
)	
Defendant.)	
_____)	

MEMORANDUM ORDER AND OPINION
DENYING MOTION FOR JUDGMENT AS A MATTER OF LAW

This matter comes before the Court on plaintiff Safetech International, Inc.'s (Safetech) Motion for Judgment as a Matter of Law (Doc. 140). On June 22, 2004, the jury returned a verdict in favor of defendant Air Products and Controls, Inc. (Air Products) on Safetech's claims of breach of contract and tortious interference. On Air Products' claims of goods sold on account, breach of contract, failure to pay for goods sold and delivered, and unjust enrichment, the jury found in favor of Air Products and awarded \$216,318.84 in damages. Safetech asks the Court to reverse the jury verdict and grant judgment as a matter of law pursuant to Fed. R. Civ. P. 50(b) on its claims of tortious interference and breach of contract, or in the alternative, to order a new trial on its claims. For the reasons stated below, Safetech's motion is denied.

A. Judgment as Matter of Law

1. Legal Standard

Judgment as a matter of law under Fed. R. Civ. P. 50(b) should be "cautiously and

sparingly granted.”¹ A district court may grant a Rule 50(b) motion “only if the evidence points but one way and is susceptible to no reasonable inferences which may support the opposing party’s position.”² In determining whether judgment as a matter of law is proper, the Court may not weigh the evidence, consider the credibility of witnesses, or substitute its judgment for that of the jury.³ Instead, the Court determines whether there is any legally sufficient evidentiary basis to support a claim under the controlling law, reviewing all evidence in the record and construing it in the light most favorable to the nonmoving party.⁴ Only when there is “no legally sufficient evidentiary basis,” or a mere scintilla of evidence favoring the nonmovant, must the Court enter judgment as a matter of law.⁵

The standard for judgment as a matter of law “is particularly strict” when the movant is the party with the burden of proof.⁶ As the Tenth Circuit has stated:

When the party with the burden of proof moves for a directed verdict the evidence must be viewed from a different perspective. Rather than considering the evidence for its sufficiency to support a finding for the opposing party as is done when the party not having the burden of proof has made such a motion, the evidence is tested for its overwhelming effect. The test is a strict one, and *a directed verdict for the party having the burden of proof may be granted only where he has established his case by evidence that the jury would not be at liberty to disbelieve.*⁷

¹*Black v. M & W Gear Co.*, 269 F.3d 1220, 1238 (10th Cir. 2001).

²*Cummings v. Gen. Motors Corp.*, 365 F.3d 944, 949 (10th Cir. 2004).

³*Johnson v. Unified Gov’t of Wyandotte County/Kansas City, Kansas*, 371 F.3d 723, 728 (10th Cir. 2004).

⁴*Id.*

⁵Fed. R. Civ. P. 50 (a); *Century 21 Real Estate Corp. v. Meraj Int’l Inv. Corp.*, 315 F.3d 1271, 1278 (10th Cir. 2003).

⁶*Weese v. Schukman*, 98 F.3d 542, 547 (10th Cir. 1996).

⁷*Id.* (emphasis in original); *Black v. M & W Gear Co.*, 269 F.3d 1220, 1238 (10th Cir. 2001).

Here, Safetech bears a heavy burden as it seeks judgment as a matter of law on claims for which it has the burden of proof.

2. Discussion

Safetech suggests that the evidence adduced at trial was legally insufficient to support the jury's verdict on its claims of breach of contract and tortious interference making judgment as a matter of law appropriate. At the outset, the Court notes that Safetech has misstated its burden. Safetech must prove more than that there was insufficient evidence to support the verdict; instead, Safetech must prove that it has established its claims of breach of contract and tortious interference by evidence that the jury would not be at liberty to disbelieve. The Court analyzes each of Safetech's claims in turn.

Breach of Contract

Safetech argues that the evidence at trial was "crystal clear and uncontroverted" that Air Products breached the Covenant Against Disclosure and Solicitation by using confidential information to contact Safetech's customers, and offering to make sales to and service those customers. At trial, however, Air Products' president testified that its contacts with Safetech's customers were simply an attempt to collect invoices due to Air Products, and that these activities were permissible under a prior agreement which permitted Air Products to directly collect payment from Safetech customers. Air Products also argued that it was Safetech that provided confidential credit references to Air Products, via Safetech's controller Carolyn Caldwell, indicating to Air Products that it could directly contact Safetech's customers. While Safetech characterized Ms. Caldwell as a renegade, acting without its president's authority and against the best interests of Safetech, Air Products summarized the evidence differently. In Air

Products' view, Safetech's president was aware of and condoned Ms. Caldwell's actions. That the jury chose to believe Air Products' account of the evidence, rather than Safetech's version, is not a ground for judgment as a matter of law.

Air Products also argued at trial that Safetech had failed to prove damages, a necessary element of a breach of contract claim.⁸ Safetech sought damages for lost profits, and accordingly, had the burden of establishing its damages to a degree of reasonable certainty.⁹ Throughout the trial, Air Products painted Safetech as a "sinking ship." Air Products emphasized that Safetech was behind on its obligations, and Safetech's president testified that Safetech had "cash flow" issues. Tax returns demonstrated that Safetech only made a profit once in the previous nine years, and the profit was only \$500. In the year before the events giving rise to the lawsuit, Safetech's net income was actually a net loss of \$57,501.93, according to Safetech's income statement. Safetech's only evidence of damages was a damage chart, prepared by Safetech's president, which estimated sales for 2002 and 2003 based on sales made in 2001. No previous years were included in the damage chart. The jury could reasonably have believed, based upon the evidence, that Safetech truly was a sinking ship and that Air Products was not to blame for Safetech's financial condition and ultimate ruin.

Finally, Safetech makes no mention of Air Products' affirmative defenses of estoppel and unclean hands. The jury could have believed all of Safetech's evidence, but yet determined that due to estoppel or unclean hands, Air Products was not liable to Safetech. In short, Safetech has not shown that the evidence it relies upon is "evidence that the jury would not be at liberty to

⁸See Jury Instruction No. 16.

⁹See Jury Instruction No. 17.

disbelieve,” particularly in light of its failure to discuss Air Products’ affirmative defenses. Consequently, Safetech has failed to carry its weighty burden on its breach of contract claim.

Tortious Interference

Safetech similarly argues that the jury’s verdict on its tortious interference claim was not supported by the evidence. To sustain this assertion, Safetech lists evidence, which in its view, was uncontroverted at trial. This evidence is that Air Products: 1) had shown its interest in acquiring Safetech for years; 2) made statements to third parties that it desired to take over Safetech’s business; 3) tried various mechanisms to effectively run Safetech’s business or to “act as the de-facto manager for Safetech’s business”; 4) ran unauthorized credit checks on Safetech’s customers without their knowledge or consent; and 5) sought direct payment, in its name for debts owed to Safetech and offered discounts to Safetech’s customers without Safetech’s knowledge and consent. This evidence, however, was not uncontroverted at trial. For instance, Air Products’ president testified that Air Products did not have an interest in acquiring Safetech; that he was authorized by Safetech, through its controller Ms. Caldwell, to run credit checks on Safetech’s customers; and that he believed Air Products had the right under a prior agreement to directly collect payment from Safetech’s customers.

More fundamentally, for the Court to grant judgment as a matter of law, Safetech must show that it produced evidence that the jury was not entitled to disbelieve on every element of its tortious interference claim, not merely that some evidence adduced at trial supports its claims. Pursuant to Jury Instruction No. 18, to which Safetech posed no objection, Safetech had to show, *inter alia*, that it had an existing business relationship or expectancy with the probability of future economic benefits with its customers; that but for Air Products’ conduct, it was reasonably

certain to have continued the relationship or realized the expectancy; and that it suffered damages as a result of Air Products' misconduct. As previously discussed, however, at trial Air Products introduced evidence that Safetech was in poor financial condition and was struggling to stay afloat. A reasonable jury could have believed that, in light of Safetech's financial situation, it had no expectancy with the probability of future economic benefits with its customers, and was not reasonably certain to have realized business expectancies but for Air Products' actions. Finally, the jury could have attributed Safetech's financial losses to Safetech's financial woes, rather than any alleged interference on the part of Air Products.

Conspicuously absent from Safetech's argument on its tortious interference claim is any discussion of Air Products' affirmative defenses of estoppel and unclean hands. Air Products presented evidence to support its affirmative defenses, and during closing argument explained how its affirmative defenses fit the evidence presented. The jury could reasonably have found that Air Products proved its affirmative defenses and, for that reason alone, rendered a verdict against Safetech. Safetech has simply not proven that it is entitled to judgment as a matter of law on its tortious interference claim.

B. New Trial

1. Legal Standards

Safetech also requests that the Court grant it a new trial in the event its motion for judgment as a matter of law is denied. However, Safetech does not state a basis for a new trial. The Court divines, based upon its arguments for judgment as a matter of law, that it is seeking a new trial on the ground that the jury verdict was against the weight of the evidence. Fed. R. Civ. P. 59(a) authorizes the court to grant a new trial to all or any of the parties on all or part of the

issues “in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States.” A motion for a new trial based on the ground that the verdict is against the weight of the evidence presents a question of fact, not law, and is committed to the trial court's discretion.¹⁰ This discretionary power should only be invoked in the exceptional case where the verdict is “clearly, decidedly, or overwhelmingly against the weight of the evidence.”¹¹ “A new trial is not warranted simply because the court would have reached a different verdict.”¹² Because of the sanctity attached to jury verdicts, courts do not lightly overturn them; thus, motions for new trial are “not regarded with favor and should only be granted with great caution.”¹³

Safetech has fallen short of the showing necessary to overturn a jury verdict. Indeed, it provides no argument or analysis in its papers suggesting that it is entitled to a new trial. In the Court's own review of the evidence, it finds that the verdict was not “clearly, decidedly, or overwhelmingly against the weight of the evidence.” Both Safetech and Air Products presented evidence on Safetech's claims of breach of contract and tortious interference and on Air Products' affirmative defenses of estoppel and unclean hands. The jury simply believed Air Products' evidence. That the Court may have reached a different verdict is not a valid basis for usurping the jury's function by ordering a new trial. Thus, Safetech's motion for a new trial in the alternative is denied.

¹⁰*Patton v. TIC United Corp.*, 77 F.3d 1235, 1242 (10th Cir. 1996), *cert. denied* 518 U.S. 1005 (1996); *Brown v. McGraw-Edison Co.*, 736 F.2d 609, 616 (10th Cir. 1984).

¹¹*Patton*, 77 F.3d at 1242 (citing *Brown*, 736 F.2d at 616-17).

¹²*Hillman v. United States Postal Serv.*, 169 F. Supp. 2d 1218, 1222 (D. Kan. 2001) (quotation omitted).

¹³*Id.*

IT IS THEREFORE ORDERED BY THE COURT that Safetech's Motion for Judgment as a Matter of Law, or in the alternative, Motion for a New Trial (Doc. 140) is DENIED.

IT IS SO ORDERED.

Dated this 17th day of August 2004.

S/ Julie A. Robinson
Julie A. Robinson
United States District Judge